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Online Counterfeiting and the Challenges of Criminal Enforcement: A Comparative Study of India and the UK

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Abstract
The sale of counterfeit goods and pirated content through online marketplaces, social media and stand-alone websites has outgrown enforcement models designed for physical markets and border seizures. This paper examines the criminal-law response to online counterfeiting in India and the United Kingdom, with reference to the TRIPS Agreement 1994, the Trade Marks Act 1999, the Copyright Act 1957, the Bharatiya Nyaya Sanhita 2023 and the Information Technology Act 2000 in India, and the Trade Marks Act 1994, the Copyright, Designs and Patents Act 1988, the Fraud Act 2006 and the Proceeds of Crime Act 2002 in the United Kingdom. It compares the two systems on offences, penalties, intermediary liability, institutional arrangements and cross-border cooperation, and identifies their limitations. It concludes that India has a strong statutory framework undermined by procedural and capacity constraints, that the United Kingdom has a more coordinated institutional model but a fragmented legal basis and heavy reliance on private rights-holders, and that both are weakened by anonymity, jurisdictional dispersion and the uncertain place of intermediaries.

Keywords: online counterfeiting; trade mark offences; copyright piracy; intermediary liability; criminal enforcement; cross-border jurisdiction; TRIPS; India; United Kingdom

1. Introduction

Counterfeiting was historically a problem of physical markets, warehouses and ports, and enforcement rested on police raids and customs detention. The internet has changed its character. Counterfeiters can now advertise on global marketplaces and social media, accept payment through digital intermediaries and ship small parcels directly to consumers, while operating under pseudonyms and relocating a storefront within hours of its removal. The OECD and the EUIPO estimated that trade in counterfeit and pirated goods amounted to about 2.5 per cent of world trade in 2019, and that e-commerce and small consignments had become an important distribution channel.[1] Counterfeits also harm consumers directly, since fake medicines, cosmetics, electrical goods and automotive parts can be dangerous, and they are frequently linked with organised crime and tax evasion.

[1]OECD & EUIPO, *Global Trade in Fakes: A Worrying Threat* (OECD Publishing, Paris, 2021).

In this paper, counterfeiting means the intentional, unauthorised use of a trade mark identical to, or indistinguishable from, a registered mark on goods or services, and, for convenience, the connected offence of commercial copyright piracy.[2] The paper asks how far the criminal law of India and the United Kingdom can reach online counterfeiting, and what prevents it from doing so effectively.

1.1 International Legal Foundations

Both States are bound by TRIPS. Article 41 requires effective enforcement procedures that permit action against infringement, including expeditious remedies, and Article 61 obliges Members to provide criminal procedures and penalties at least in cases of wilful trade mark counterfeiting or copyright piracy on a commercial scale, with remedies that include imprisonment and fines sufficient to provide a deterrent.[3] The Paris Convention 1883 and the WIPO Copyright Treaty 1996 supply further standards, the latter requiring protection against the circumvention of technological measures.[4] TRIPS leaves the means of implementation to each Member, so the two systems have reached different solutions.

1.2 Online Counterfeiting as a Distinct Enforcement Problem

Four features set online counterfeiting apart from its physical counterpart. First, scale and speed: listings can be multiplied and re-created faster than they can be removed. Second, anonymity: sellers can hide behind false identities, privacy services and shell accounts. Third, territorial dispersion: the seller, the platform, the server, the payment processor, the warehouse and the consumer may each lie in a different State. Fourth, the central role of intermediaries, which hold the information and technical means needed to act but are not themselves the wrongdoers. Each of these puts pressure on a criminal law built around territorial jurisdiction and identifiable offenders.

1.3 Challenges of Criminal Enforcement

Criminal enforcement raises questions that civil remedies do not: who may set the criminal process in motion, whether the police or private rights-holders carry the investigation, what proof of intent is required, how evidence held abroad or by platforms is obtained, and how offenders in other jurisdictions are reached. Both systems also face the wider problem of prioritisation, since IP offences compete for police resources with violent and other serious crime. The remainder of the paper examines the Indian and UK frameworks, the cross-border dimension, and a comparison of the two.

2. Criminal Enforcement in India

2.1 Trade Mark Offences

The principal offences are in Chapter XIII of the Trade Marks Act 1999. Section 103 penalises the application of a false trade mark or false trade description, and section 104 the sale of goods or provision of services bearing a false trade mark, with imprisonment of not less than six months, extendable to three years, and a fine of not less than fifty thousand rupees, extendable to two lakh rupees, subject to the court's power to impose less for adequate and special reasons.[5] Section 115 sets the procedural conditions: courts below the rank of Metropolitan Magistrate or Judicial Magistrate of the First Class may not try the offences, and a police officer below the rank of Deputy Superintendent may not search and seize without

[2]Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994 (TRIPS), art. 51, fn. 14.

[3]TRIPS, *supra* note 2, arts. 41, 61.

[4]The Paris Convention for the Protection of Industrial Property, 1883; WIPO Copyright Treaty, 1996, art. 11.

[5]The Trade Marks Act, 1999 (Act 47 of 1999), ss. 101-104. Section 105 provides enhanced punishment for a second or subsequent conviction.

a warrant, and then only after obtaining the opinion of the Registrar on facts involved in the offence.[6] The Bharatiya Nyaya Sanhita 2023 adds general offences, including cheating under section 318 and the property-mark offences in sections 345 to 350, which cover counterfeiting a property mark and selling goods marked with one.[7]

2.2 Copyright Piracy and Technological Measures

Section 63 of the Copyright Act 1957 punishes knowing infringement with imprisonment of six months to three years and a fine of fifty thousand to two lakh rupees, and section 63A raises the penalty for repeat offenders. Sections 65A and 65B protect technological protection measures and rights-management information against circumvention and removal.[8] These provisions apply to streaming sites, torrent indexes and unlicensed distribution of films and software, although the volume of online infringement far exceeds the number of prosecutions.

2.3 The Information Technology Act 2000 and Intermediary Liability

The Information Technology Act 2000 does not contain a counterfeiting offence as such, but its provisions on computer-related offences, and section 66D on cheating by personation using a computer resource, may apply to fraudulent online storefronts. Its chief importance lies in section 79, which grants intermediaries a conditional safe harbour. In *Shreya Singhal* v. *Union of India* the Supreme Court read down the knowledge requirement in section 79(3)(b), so that an intermediary is obliged to remove content only on receipt of a court order or a government notification.[9] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 add due-diligence duties and grievance mechanisms, and the Consumer Protection (E-Commerce) Rules 2020 require marketplace entities to display seller details and to maintain grievance redressal.[10]

The Delhi High Court has been the principal forum for developing these principles. In *Christian Louboutin SAS* v. *Nakul Bajaj* it held that a marketplace which plays an active role in promoting and dealing in goods may lose the protection of safe harbour, and the Division Bench in *Amazon Seller Services (P) Ltd.* v. *Amway India Enterprises (P) Ltd.* took a more nuanced view of marketplace liability and the conduct of sellers.[11] The court has also granted John Doe orders against unidentified defendants, an approach first adopted in *Taj Television Ltd.* v. *Rajan Mandal*, and dynamic injunctions that extend to mirror and redirect websites without the need for a fresh suit, as in *UTV Software Communication Ltd.* v. *1337x.to*.[12] These remedies are civil, but they supply evidence and disclosure that criminal complaints often rely on.

2.4 Institutional Arrangements

Enforcement is shared among State police, customs and specialised bodies. The Intellectual Property Rights (Imported Goods) Enforcement Rules 2007 allow rights-holders to record their rights with customs

[6] *Ibid.*, s. 115(3)-(4).

[7] The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 318, 345-350.

[8] The Copyright Act, 1957 (Act 14 of 1957), ss. 63, 63A, 65A, 65B.

[9] The Information Technology Act, 2000 (Act 21 of 2000), ss. 66D, 79; *Shreya Singhal* v. *Union of India*, (2015) 5 SCC 1.

[10] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3; The Consumer Protection (E-Commerce) Rules, 2020, rr. 4, 5.

[11] *Christian Louboutin SAS* v. *Nakul Bajaj*, 2018 SCC OnLine Del 12215; *Amazon Seller Services (P) Ltd.* v. *Amway India Enterprises (P) Ltd.*, 2020 SCC OnLine Del 454; *see also Myspace Inc.* v. *Super Cassettes Industries Ltd.*, (2017) 236 DLT 478.

[12] *Taj Television Ltd.* v. *Rajan Mandal*, [2003] FSR 22; *UTV Software Communication Ltd.* v. *1337x.to*, 2019 SCC OnLine Del 8002.

for border action.[13] The Cell for IPR Promotion and Management (CIPAM) under the Department for Promotion of Industry and Internal Trade coordinates policy and awareness, some States have created dedicated units, such as the Telangana Intellectual Property Crime Unit, and the Indian Cyber Crime Coordination Centre and the National Cyber Crime Reporting Portal handle online offences generally. There is, however, no national IP crime agency, and the quality of enforcement varies widely between States.

2.5 Extraterritorial Reach

Section 1(4) of the BNS applies Indian law to offences by Indian citizens anywhere, and section 208 of the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) governs the inquiry and trial of offences committed outside India.[14] Section 75 of the Information Technology Act extends the Act to offences committed outside India by any person where the act involves a computer, computer system or network located in India. In civil proceedings, the Delhi High Court applies a purposeful-availment test to foreign websites, requiring that the defendant has specifically targeted Indian customers, and that approach is commonly used for jurisdiction over foreign sellers.[15]

3. Criminal Enforcement in the United Kingdom

3.1 Trade Mark Offences

Section 92 of the Trade Marks Act 1994 makes it an offence, with a view to gain or intent to cause loss, to apply a sign identical to or likely to be mistaken for a registered mark to goods or their packaging, to sell or possess such goods for sale, or to possess articles specifically designed to make copies of a sign. The maximum penalty on indictment is ten years' imprisonment, a fine or both.[16] Section 93 and the associated provisions deal with forfeiture, and section 107 places a duty to enforce on local weights and measures authorities, that is, Trading Standards. The offences require that the defendant acted without the proprietor's consent and, in the case of section 92(5), allow a defence of reasonable belief that use of the sign did not infringe the registered mark.

3.2 Copyright Offences, Fraud and Confiscation

Section 107 of the Copyright, Designs and Patents Act 1988 criminalises making, importing, possessing in the course of a business and distributing infringing copies. The Digital Economy Act 2017 inserted section 107(2A), which penalises communicating a work to the public knowing or having reason to believe that this infringes copyright, with a maximum of ten years on indictment, and it applies to online distribution.[17] Section 296ZB deals with devices and services designed to circumvent technological measures. Because online counterfeiters usually deceive buyers, prosecutors also rely on the Fraud Act 2006, in particular false representation under section 2, possession of articles for use in fraud under section 6 and making or supplying such articles under section 7. The Proceeds of Crime Act 2002 enables

[13]The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

[14]The Bharatiya Nyaya Sanhita, 2023, *supra* note 7, s. 1(4); The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 208.

[15]The Information Technology Act, 2000, *supra* note 9, s. 75; *Banyan Tree Holding (P) Ltd.* v. *A. Murali Krishna Reddy*, 2010 (42) PTC 361 (Del).

[16]The Trade Marks Act, 1994 (UK), s. 92(1)-(6).

[17]The Copyright, Designs and Patents Act, 1988 (UK), s. 107; The Digital Economy Act, 2017 (UK), s. 32.

confiscation of the proceeds of conviction and applies to the money laundering offences in Part 7, which are often the most practical route to remove the financial benefit.[18]

3.3 Intermediaries, Blocking Orders and Platform Regulation

The Electronic Commerce (EC Directive) Regulations 2002 give hosting providers immunity unless they have actual knowledge of unlawful activity and fail to act expeditiously on obtaining it.[19] In *L'Oréal SA* v. *eBay International AG* the Court of Justice held that an operator which plays an active role giving it knowledge or control of the data cannot rely on the hosting exemption, and the case is still influential in the United Kingdom as assimilated case law.[20] Courts may also grant injunctions against internet service providers requiring them to block access to websites selling counterfeit goods. The Court of Appeal approved such orders for trade mark infringement in *Cartier International AG* v. *British Sky Broadcasting Ltd.*, and the Supreme Court held that the rights-holder must bear the reasonable costs of implementation.[21] Newer legislation widens the regulatory perimeter. The Online Safety Act 2023 imposes duties on the largest services regarding fraudulent advertising, the Economic Crime and Corporate Transparency Act 2023 created an offence of failure to prevent fraud by large organisations, and the Digital Markets, Competition and Consumers Act 2024 now governs unfair commercial practices previously dealt with under the Consumer Protection from Unfair Trading Regulations 2008.[22] None of these is a dedicated anti-counterfeiting measure, but each increases the pressure on platforms.

3.4 Institutional Arrangements

The UK has a more centralised set of enforcement bodies than India. The Police Intellectual Property Crime Unit (PIPCU), set up in 2013 within the City of London Police, investigates online IP crime and runs initiatives such as Operation Creative, which targets advertising on infringing sites. Local Trading Standards departments, supported by National Trading Standards, bring many prosecutions; HMRC and Border Force deal with imports; and the Intellectual Property Office coordinates policy and publishes intelligence through the IP Crime Group. Rights-holders may also bring private prosecutions, a right preserved by section 6 of the Prosecution of Offences Act 1985, although the Crown Prosecution Service may take over and discontinue them.[23]

3.5 Jurisdiction over Online Offences

Under Part I of the Criminal Justice Act 1993, fraud and dishonesty offences, including those under the Fraud Act 2006, may be tried in England and Wales where a relevant event occurred there. The Court of Appeal has applied a test of whether a substantial measure of the activities constituting the crime took place in England and Wales, and the courts do not need to determine that another State is the more appropriate forum.[24] A seller abroad who targets customers in the United Kingdom can therefore be

[18]The Fraud Act, 2006 (UK), ss. 2, 6, 7; The Proceeds of Crime Act, 2002 (UK), Pts. 2, 7.

[19]The Electronic Commerce (EC Directive) Regulations, 2002 (UK), regs. 17-19.

[20]*L'Oréal SA* v. *eBay International AG*, Case C-324/09, [2011] ECR I-6011; *L'Oréal SA* v. *eBay International AG*, [2009] EWHC 1094 (Ch).

[21]*Cartier International AG* v. *British Sky Broadcasting Ltd.*, [2016] EWCA Civ 658; *Cartier International AG* v. *British Telecommunications Plc*, [2018] UKSC 28; The Copyright, Designs and Patents Act, 1988, *supra* note 17, s. 97A; *Twentieth Century Fox Film Corp.* v. *Newzbin Ltd.*, [2010] EWHC 608 (Ch).

[22]The Online Safety Act, 2023 (UK), ss. 38, 39; The Economic Crime and Corporate Transparency Act, 2023 (UK), s. 199; The Digital Markets, Competition and Consumers Act, 2024 (UK), Pt. 4.

[23]The Prosecution of Offences Act, 1985 (UK), s. 6.

[24]The Criminal Justice Act, 1993 (UK), Pt. I; *R.* v. *Smith (Wallace Duncan) (No. 4)*, [2004] EWCA Crim 631; *cf. Libman* v. *The Queen*, [1985] 2 SCR 178 (Can.).

prosecuted if the transaction has a sufficient connection with it, although a prosecution in practice depends on securing the defendant's presence.

4. Cross-Border Dimensions and International Cooperation

Online counterfeiting is typically a transnational offence, and the effectiveness of national criminal law depends on cooperation. Both India and the United Kingdom are parties to the UN Convention against Transnational Organized Crime 2000, which provides a basis for mutual legal assistance and extradition where an offence involves an organised criminal group.[25] The United Kingdom is a party to the Budapest Convention on Cybercrime 2001, which includes copyright-related offences and procedures for preserving and obtaining electronic evidence; India is not a party, which limits direct access to its cooperation mechanisms.[26] Chapter VIII of the BNSS governs reciprocal arrangements for assistance in criminal matters, and bilateral extradition and mutual legal assistance arrangements exist between the two States. However, formal requests are slow compared with the speed of online trade, and extradition generally requires dual criminality and an offence of sufficient gravity.

Informal and private cooperation is increasingly important. Platforms operate notice-and-takedown and brand-protection programmes, payment processors and domain registrars act on rights-holder complaints, and police units such as PIPCU work with industry. These measures are faster than formal processes but are not backed by clear legal duties and can raise questions about transparency and due process for the sellers affected.

5. Comparative Analysis

The two systems share a common international foundation and a similar set of offences, but they differ in penalties, institutions and the treatment of intermediaries.

Aspect	India	United Kingdom
Core statutes	Trade Marks Act 1999 ss 103–105; Copyright Act 1957 s 63; BNS 2023 ss 318, 345–350; IT Act 2000	Trade Marks Act 1994 s 92; CDPA 1988 s 107; Fraud Act 2006 ss 2, 6, 7; POCA 2002
Maximum prison term	Three years (trade mark and copyright offences)	Ten years on indictment (TMA s 92; CDPA s 107(2A))
Prosecution and investigation	State police, with special conditions under s 115 TMA (rank of officer; Registrar's opinion)	PIPCU, Trading Standards, HMRC; private prosecutions allowed
Intermediary liability	IT Act s 79 safe harbour, read down in Shreya Singhal; IT Rules 2021; Delhi High Court case law	2002 Regulations; blocking injunctions (Cartier); Online Safety Act 2023; DMCC Act 2024
Online-specific remedies	John Doe and dynamic injunctions (civil); blocking under IT Act s 69A	Website-blocking orders; confiscation under POCA

[25] United Nations Convention against Transnational Organized Crime, 2000, arts. 16, 18.
[26] Convention on Cybercrime, 2001 (Budapest Convention), art. 10.

Aspect	India	United Kingdom
Extraterritorial reach	BNS s 1(4); IT Act s 75; BNSS s 208	Criminal Justice Act 1993 Part I; substantial-measure test
International instruments	TRIPS; UNTOC; not party to Budapest Convention	TRIPS; UNTOC; Budapest Convention

Two differences stand out. First, the UK allows higher sentences and applies fraud and money-laundering law alongside IP offences, so offenders can be pursued for the proceeds of their activity and not only for the trade mark infringement. Indian penalties are lower, and the procedural safeguards in section 115 of the Trade Marks Act, which were designed to protect against abuse, create delay in urgent online cases. Second, the Indian system relies more heavily on the judiciary, in particular the Delhi High Court, to develop remedies against intermediaries and unknown defendants, whereas the UK combines court-ordered blocking with specialised enforcement units and growing statutory regulation of platforms. Both depend on rights-holders to identify infringements and supply evidence, and neither has a settled rule of priority where several States have a legitimate claim to prosecute the same seller.

6. Limitations and Challenges

India. Enforcement agencies often lack the technical training to trace online sellers, and prosecutions are scarce relative to the scale of infringement. Section 115 of the Trade Marks Act slows search and seizure, penalties are modest, trial delays are long, and the safe harbour in section 79 of the IT Act, as limited by *Shreya Singhal*, means that platforms need not act without a court order or government notification, which reduces the speed of removal. India's non-membership of the Budapest Convention complicates evidence gathering from foreign platforms.

United Kingdom. The statutory basis is spread across several Acts, which makes charging decisions complex. Police and Trading Standards resources are limited and IP offences compete with other priorities. The reliance on private prosecutions and rights-holder investigation raises concerns about unequal access to enforcement, since only well-resourced brands can use it. Brexit has also altered cooperation with EU customs and enforcement bodies, and the status of EU-derived case law on intermediary liability is a source of uncertainty.

Common challenges. Anonymity and the use of false or stolen identities make it difficult to identify offenders. Evidence is held by platforms, hosting providers and payment processors in other jurisdictions, and its collection through formal channels is slow. Sellers move between platforms and domains, so a takedown or blocking order has only a temporary effect. Small consignments sent directly to consumers are difficult for customs to detect. Differences in legal standards and penalties between States encourage sellers to operate from the weakest jurisdiction, and any measures against intermediaries must be balanced against freedom of expression and the rights of legitimate sellers.

Limitations of the study. This study is doctrinal and confined mainly to conventions, statutes, reported decisions and secondary literature. It does not provide an empirical analysis of prosecution and conviction data or of the practical operation of enforcement agencies in either country, and the pace of legislative change in both States means that some provisions, in particular newly enacted ones, have yet to be tested in the courts.

7. Findings and Suggestions

The analysis supports the view that both systems have adequate offences on paper but are limited in practice by procedure, resources and the difficulty of reaching offenders and intermediaries across borders. The following suggestions follow from the findings.

1. **Procedural reform in India.** Section 115 of the Trade Marks Act should be reviewed so that the safeguards against abuse do not delay action against online sellers, for example by setting a time limit for the Registrar's opinion and by permitting electronic evidence.
2. **Specialised enforcement capacity.** India should consider a national IP crime unit, on the model of PIPCU, with trained cyber investigators, while the UK should ensure that Trading Standards and police units are adequately funded.
3. **Clear intermediary obligations.** Both States should define proportionate duties for marketplaces, including seller verification, notice-and-action procedures and measures against repeat offenders, without imposing a general monitoring obligation.
4. **Stronger international cooperation.** India should consider acceding to the Budapest Convention or concluding equivalent arrangements, and both States should expedite mutual legal assistance and share information on repeat offenders.
5. **Follow the money.** Enforcement should target payment channels, advertising revenue and proceeds, using confiscation powers and the cooperation of financial intermediaries, as well as the sellers themselves.
6. **Rights and proportionality.** Blocking orders, takedown regimes and private cooperation arrangements must remain consistent with due process, transparency and fair-trial guarantees, and with the rights of legitimate sellers and users.

8. Conclusion

Online counterfeiting is a cross-border form of crime which exposes the limits of enforcement systems built around territory, identifiable offenders and physical goods. India has a comprehensive set of offences and an active judiciary that has developed innovative remedies, but its criminal enforcement is constrained by procedural conditions, modest penalties and limited investigative capacity. The United Kingdom has higher penalties, a wider range of related offences and more specialised institutions, but its framework is fragmented and relies heavily on rights-holders. In both States, the position of intermediaries is unsettled, and international cooperation remains slower than the offending it is intended to address.

Effective enforcement therefore requires a combination of clear offences, specialised and adequately resourced agencies, proportionate duties on intermediaries, faster international cooperation and respect for fundamental rights. A comparative reading suggests that each system can learn from the other: India from the UK's institutional coordination and use of financial investigation, and the UK from India's experience of dynamic and John Doe remedies against unidentified online infringers.

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